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21 *Counsel for Defendant Google LLC*

22 UNITED STATES DISTRICT COURT

23 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

24 CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of all similarly  
situated,

25 Plaintiffs,

26 v.

27 GOOGLE LLC,  
28 Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE  
MOTION FOR CLARIFICATION OF  
MAY 20, 2022 PRESERVATION ORDER  
(DKT. 587)**

Judge: Hon. Susan van Kenlen

1           **I. INTRODUCTION**

2           Pursuant to Local Rule 7-11, Google respectfully seeks clarification with respect to the  
 3 following two discrete portions in the Court’s May 20, 2022 Order Adopting in Part and Modifying  
 4 in Part the Special Master’s Report and Recommendation on Referred Discovery Issues re  
 5 Preservation Plan (Dkt. 587) (“Preservation Order”).

6           • “Prior to final disposition of this case, Google may not shorten any data preservation length  
 7 for any data source already being preserved pursuant to Google data retention policy or  
 8 pursuant to prior court orders … without the express permission of the Court.” Dkt. 587 at 9.  
 9           • “De/Encryption keys are to be preserved in their entirety for the respective time periods  
 10           (‘rotating keys’) and data sources.” *Id.* at 8.

11           **II. ARGUMENT**

12           Google seeks clarification of two implementation details to ensure that it understands the  
 13 information that is covered by the Preservation Order.

14           *First, Google requests clarification whether the Preservation Order requires Google to  
 15 seek the express permission of this Court before Google can change the retention period of any  
 16 data source, including data not covered by the Preservation Order.* The Preservation Order states  
 17 that “[p]rior to final disposition of this case, Google may not shorten any data preservation length  
 18 for any data source already being preserved pursuant to Google data retention policy or pursuant to  
 19 prior court orders, or for any data source included in this preservation plan as set forth in this Order  
 20 … without the express permission of the Court.” Dkt. 587 at 9. Google believes that the most  
 21 reasonable interpretation of this language is that “any data source already being preserved” includes  
 22 only those data sources identified specifically in the Preservation Order. However, Google is  
 23 mindful that the language may also be interpreted to include **any and all** data sources within Google  
 24 that are currently covered by a retention policy, regardless of their relevance to this case.

25           The latter interpretation would sweep in many logs at Google that are irrelevant to the claims  
 26 and defenses in *Brown v. Google*. It would be unduly burdensome, and potentially overwhelm the  
 27 Court, if Google were required to seek permission for preservation period changes of clearly  
 28 irrelevant log data including (i) sources that do not contain user data, (ii) data that pertains to users

1 and events outside of United States, (iii) sources that pertain to products and services not at issue in  
 2 this case, such as Google Arts & Culture, Assistant, Blogger, Calendar, Chat, Contacts, Dictionary,  
 3 Docs, Drive, Fi, Fit, Gmail, Home, Meet, Messenger, One, Pay, Play, Photos, Street View, and  
 4 Translator, or (iv) data that is older than June 1, 2016, the first day of the class period. Dkt. 587-1  
 5 at 1. *Bright Sols. for Dyslexia, Inc. v. Doe 1*, 2015 WL 5159125, at \*2 (N.D. Cal. Sept. 2, 2015)  
 6 (“Courts must exercise restraint in using their inherent authority to issue preservation orders ...  
 7 Before a preservation order is implemented, there must be some showing of a significant concern  
 8 that *potentially relevant* evidence will be destroyed causing harm to the opposing party”) (emphasis  
 9 added); *Lord Abbett Mun. Income Fund, Inc. v. Asami*, 2014 WL 5477639, at \*3 (N.D. Cal. Oct. 29,  
 10 2014) (“This district recognizes that the proportionality principle applies to the duty to preserve  
 11 potential sources of evidence.”).

12 Therefore, Google respectfully seeks clarification that it is not required to seek permission  
 13 for changes to preservation periods of any logs not identified specifically in the Preservation Order.

14 ***Second, Google seeks clarification whether the Preservation Order requires Google to  
 15 preserve all sensitive rotating encryption keys even if the data is preserved in a safe and secure  
 16 manner that does not require such keys.*** The Preservation Order sustained Plaintiffs’ objection to  
 17 the Special Master’s April 4, 2022 Report and Recommendation that “Google should be required to  
 18 preserve all encryption keys necessary to decrypt identifiers and cookies,” and directs Google to  
 19 preserve de/encryption keys in their entirety for the respective time periods and data sources.  
 20 Dkt. 587 at 8. Google understands the need to preserve data in a format that can be decrypted, and  
 21 respectfully seeks clarification that Google would be in compliance with the Preservation Order by  
 22 preserving the encryption keys necessary to decrypt data preserved pursuant to the Preservation  
 23 Order and “allow Plaintiffs to read the data” (Dkt. 545-2 at 1). Specifically, Google seeks to clarify  
 24 that it need not preserve sensitive rotating encryption keys if those keys are not required to decrypt  
 25 the preserved data. Google seeks this clarification because preserving sensitive rotating encryption  
 26 keys constitutes a significant information security risk.

27 Finally, Google would provide additional briefing on this issue if it would aid the Court.  
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